



3410-02 P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS-NOP-13-0011; NOP-13-01PR]

RIN 0581-AD33

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing).

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on May 25, 2012 and October 18, 2012. The recommendations addressed in this proposed rule pertain to establishing exemptions (uses) for one substance in organic crop production and two substances in organic processing. Consistent with the recommendations from the NOSB, this proposed rule would add the following substances, along with any restrictive annotations, to the National List: biodegradable biobased mulch film; Citrus hystrix, leaves and fruit; and curry leaves (Murraya koenigii). This action also proposes a new definition for biodegradable biobased mulch film. This proposed rule would also remove two listings for nonorganic agricultural products on the National List, hops (Humulus lupulus) and unmodified rice starch, as their use exemptions expired on January 1, 2013, and June 21, 2009, respectively.

DATES: Comments must be received by (INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW, Room 2646-So., Ag Stop 0268, Washington, DC 20250-0268.

Instructions: All submissions received must include the docket number AMS-NOP-13-0011; NOP-13-01PR, and/or Regulatory Information Number (RIN) 0581-AD32 for this rulemaking. You should clearly indicate the topic and section number of this proposed rule to which your comment refers. You should clearly indicate whether you support the action being proposed for the substances in this proposed rule. You should clearly indicate the reason(s) for your position. You should also supply information on alternative management practices, where applicable, that support alternatives to the proposed action. You should also offer any recommended language change(s) that would be appropriate to your position. Please include relevant information and data to support your position (e.g. scientific, environmental, manufacturing, industry, impact information, etc.). Only relevant material supporting your position should be submitted. All comments received will be posted without change to <http://www.regulations.gov>.

AMS is particularly interested in comments regarding the applicability of the proposed compostability standards for biodegradable biobased mulch film, and whether guidance on management practices is necessary to prevent mulch film from accumulating in fields.

Document: For access to the document to read background documents or comments received, go to <http://www.regulations.gov>. Comments submitted in response to this proposed rule will also be available for viewing in person at USDA-AMS, National Organic Program, Room 2646-South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720-3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, Telephone: (202) 720-3252; Fax: (202) 205-7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) (7 CFR part 205), the National List regulations in sections 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501-6522), and USDA organic regulations, in section 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List. Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB.

Since established, AMS has published multiple amendments to the National List beginning on October 31, 2003 (68 FR 61987). AMS published the most recent amendment to the National List on September 27, 2012 (77 FR 59287).

This proposed rule would amend the National List to reflect three recommendations submitted to the Secretary by the NOSB on May 25, 2012 (Citrus hystrix leaves and fruit and curry leaves (Murraya koenigii)) and October 18, 2012 (biodegradable biobased mulch film). Based upon their evaluation of petitions submitted by industry participants, public comments, market surveillance, and review of technical reports, the NOSB recommended that the Secretary add one substance (biodegradable biobased mulch film) to section 205.601 of the National List for organic crop production and add two substances to section 205.606 (Citrus hystrix leaves and fruit and curry leaves (Murraya koenigii)) for organic processing. This rule would also remove listings for two substances (hops and unmodified rice starch) as their use exemptions have expired. The exemptions for the use of each new substance in organic crop production and handling were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517-6518). In addition, the amendments for two new substances proposed for organic handling were also evaluated by the NOSB using NOP criteria on commercial availability (72 FR 2167).

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the USDA organic regulations:

Section 205.2 Terms defined.

Section 205.601 Synthetic substances allowed for use in organic crop production.

This proposed action would amend sections 205.2 and 205.601 by adding the following new definition and new substance to the National List for organic crop production.

Biodegradable Biobased Mulch Film.

Biodegradable biobased mulch film was petitioned to the National List in January 2012 for use as synthetic mulch for organic crop production.¹ This substance is also alternatively called “bioplastic mulch.”

Biodegradable biobased mulch film is used as an alternative to petroleum-based plastic mulches that do not biodegrade. Traditional plastic mulches require removal at the end of the growing or harvest season under OFPA and the USDA organic regulations (7 U.S.C. 6508; §§ 205.206(c)(6) and 205.601(b)(2)(ii)). Biodegradable biobased mulch film is applied to agricultural fields as a thin plastic layer and is left in the field to biodegrade. Like traditional plastic mulches, biodegradable biobased mulch film is used to cover the soil, modify soil temperatures, retain soil moisture, and help control weeds and insect problems.²

Mulch film may be made from a variety of degradable polymers, including polylactic acid (PLA), polyhydroxyalkanoates (PHA), and aliphatic-aromatic copolymers (AAC). Some biodegradable mulch films are made from biological sources (i.e., biobased), and some are derived from fossil fuel sources.³

At its October 15-18, 2012 meeting in Providence, RI, the NOSB recommended that biodegradable biobased mulch film be added to the National List, with restrictions, for use in organic crop production. The NOSB evaluated biodegradable biobased mulch film against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria.

¹ Petition is available on NOP Web site in Petitioned Substances Database under “B ” at <http://www.ams.usda.gov/NOPNationalList>

² Technical Evaluation Report, Biodegradable Mulch Film Made from Bioplastics, August 2, 2012. Available on the NOP Web site at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100029>.

³ *Ibid.*

The NOSB indicated in its recommendation that the use of this substance is an opportunity to reduce landfilling of traditional plastic mulches without sacrificing organic farming principles.

The regulatory text recommended by the NOSB is provided in Table 1. The NOSB indicated in its recommendation that mulch film must meet certain criteria for biodegradability, compostability, and biobased content (Criteria A and B in Table 1). In addition, the NOSB recommended restrictions on the types of materials allowed for the production of biobased mulch film (Criterion C). The NOSB also indicated that growers must take appropriate actions to ensure complete degradation (Criterion D). The NOSB indicated that criteria A through C are intended to apply to certifying agents and material evaluation programs that will determine allowed products. Criterion D was intended to refer to the grower's responsibility.

As part of this recommendation, the NOSB also proposed the following definition for the new term biobased: "Organic material in which carbon is derived from a renewable resource via biological processes. Biobased materials include all plant and animal mass derived from carbon dioxide recently fixed via photosynthesis, per definition of a renewable resource (ASTM)."⁴ The NOSB recommended that the term "biobased" be included in order to specifically prohibit products derived from petroleum, such as those made from aliphatic-aromatic copolymers.

The Secretary has reviewed and proposes to accept the NOSB's recommendation, with some modifications. Table 1 provides a comparison of the NOSB's recommended regulatory text and the action proposed under this rule.

⁴ ASTM refers to ASTM International, formerly known as the American Society for Testing and Materials (ASTM), <http://www.astm.org>.

This proposed rule would amend section 205.2 (Terms defined) by adding a new definition for “biodegradable biobased mulch film” to section 205.2 of the USDA organic regulations.

This action proposes to define biodegradable biobased mulch film as a synthetic mulch that meets the following criteria: (1) Meets the compostability standards of ASTM D6400 or D6868, or of other equivalent international standards, i.e., EN 13432, EN 14995, or ISO 17088; (2) Demonstrates at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years, in soil, according to ISO 17556 or ASTM D5988 testing methods; and (3) Must be biobased with content determined using ASTM D6866 testing method.⁵

This proposed rule would also add the substance “biodegradable biobased mulch film,” with restrictions, to new subparagraph (b)(2)(iii) of section 205.601. The new listing would read as follows: “Biodegradable biobased mulch films as defined in section 205.2. Must be produced without organisms or feedstock derived from excluded methods.”

The NOSB recommended that the standards for compostability, biodegradation, and biobased content be included at subparagraph (b)(2)(iii) of section 205.601. AMS proposes to include the references to these standards within a new definition at section 205.2 in order to streamline the listing of this substance and limit the number of subparagraph levels on the National List.

Table 1. Comparison of NOSB Recommendation and AMS Proposed Action for Biodegradable Biobased Mulch Film.

⁵ ASTM refers to ASTM International, formerly known as the American Society for Testing and Materials (ASTM), <http://www.astm.org>. EN refers to the European Committee for Standardization, <http://www.cen.eu>. ISO refers to the International Organization for Standardization, <http://www.iso.org>.

Section	NOSB Recommendation	AMS Proposed Action
205.2	<p>Add the following new definition to § 205.2:</p> <p><u>Biobased.</u> Organic material in which carbon is derived from a renewable resource via biological processes. Biobased materials include all plant and animal mass derived from carbon dioxide recently fixed via photosynthesis, per definition of a renewable resource (ASTM).</p>	<p>Add the following new definition to § 205.2:</p> <p><u>Biodegradable Biobased Mulch Film.</u> A synthetic mulch film that meets the following criteria:</p> <ul style="list-style-type: none"> (1) Meets the compostability standards of ASTM D6400 or D6868, or of other equivalent international standards, i.e., EN 13432, EN 14995, or ISO 17088; (2) Demonstrates at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years, in soil, according to ISO 17556 or ASTM D5988 testing methods; and (3) Must be biobased with content determined using ASTM D6866 testing method.
205.601	<p>Add the following substance to new subparagraph (iii) of § 205.601(b)(2):</p> <p>(b) As herbicides, weed barriers, as applicable.</p> <p>(2) Mulches.</p> <p>(iii) Biodegradable biobased mulch films to be reviewed meet the following criteria:</p> <p>(A) Completely biodegradable as shown by:</p> <ul style="list-style-type: none"> (1) Meeting the requirements of ASTM Standard D6400 or D6868 specifications, or of other international standard specifications with essentially identical criteria, i.e. EN 13432, EN 14995, ISO 17088; and (2) Showing at least 90% biodegradation in soil absolute or relative to microcrystalline cellulose in less than two years, in soil, tested 	<p>Add the following substance to new subparagraph (iii) of § 205.601(b)(2):</p> <p>(b) As herbicides, weed barriers, as applicable.</p> <p>(2) Mulches.</p> <p>(iii) Biodegradable biobased mulch film as defined in § 205.2. Must be produced without organisms or feedstock derived from excluded methods.</p>

	according to ISO 17556 or ASTM 5988; (B) Must be biobased with content determined using the ASTM D6866 method; (C) Must be produced without organisms or feedstock derived from excluded methods; and (D) Grower must take appropriate actions to ensure complete degradation.	
--	---	--

The proposed definition for “biodegradable biobased mulch film” includes the third-party standards for compostability, biodegradation, and biobased content which are included in the NOSB recommendation. These standards are summarized in Table 2. Each standard provides a reference for certifying agents and material evaluation programs to verify that biodegradable biobased mulch film meet certain requirements for compostability, biodegradability, and biobased content.

AMS is specifically interested in comments regarding the compostability standards included in the definition. AMS has noted that when the substance is used as recommended by the NOSB (i.e., as mulch on the surface of the soil), it is not composted according to the standards for compost under section 205.203(c) of the USDA organic regulations. In addition, the NOSB did not consider or recommend the addition of biodegradable biobased mulch film to the list of allowed synthetic compost feedstocks at section 205.601(c). This proposed action includes the compostability standards recommended by the NOSB, but AMS is interested in comments on the applicability of these standards for the intended use of the petitioned material. AMS is also interested in comments on whether the two criteria for biodegradation and biobased content, without the criteria for compostability, would be sufficient for review of this substance.

Table 2. Table of applicable standards for compostability, biodegradation, and biobased content.

Standard	Title	Criteria
ASTM D6400	Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities	Compostability
ASTM D6868	Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities	Compostability
EN 13432	Proof of compostability of plastic products	Compostability
EN 14995	Plastics — Evaluation of compostability — Test scheme and specifications	Compostability
ISO 17088	Specifications for compostable plastics	Compostability
ISO 17556	Plastics — Determination of the ultimate aerobic biodegradability of plastic materials in soil by measuring the oxygen demand in a respirometer or the amount of carbon dioxide evolved	Biodegradability
ASTM D5988	Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials in Soil	Biodegradability
ASTM D6866	Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis	Biobased Content

AMS noted that the NOSB did not recommend a minimum amount of biobased content for biodegradable biobased mulch films. AMS considered whether a minimum should be included in order to ensure that approved products will derive most of their content from biological sources, as was intended by the NOSB. AMS consulted with the USDA BioPreferred program to inquire whether they have a specific category established for biodegradable mulch film products, since product categories in the USDA BioPreferred program include standards (i.e., minimums) for products' biobased content.⁶ The USDA BioPreferred program indicated that they do not have a specific product category for biobased mulch film, and that mulch film

⁶ USDA BioPreferred® Program product categories are available at <http://www.biopreferred.gov/ProductCategories.aspx>

does not fall within their categories of “Mulch and Compost Materials”⁷ or “Films – Non-Durable.”⁸ (Manufacturers of biobased mulch film who wish to certify this product under the USDA BioPreferred program would classify it in an “undesigned” product category; products in this category must contain a minimum of 25% biobased content as measured by the standard test method.) AMS understands that biobased mulch films used by organic producers will need to be derived primarily from biobased sources in order to meet the requirements for biodegradation and compostability, so we have not proposed a minimum biobased content requirement for mulch film. Biodegradable mulch films that are not biobased, e.g., derived from fossil fuel sources, would not be permitted.

AMS considered the definition for “biobased” that was recommended by the NOSB, and we have not proposed the addition of this term to section 205.2. Instead, AMS proposed a new definition for “biodegradable biobased mulch film” that incorporates the NOSB’s intent of limiting the use of this substance to biobased products by including a testing standard for biobased content. The proposed new term “biodegradable biobased mulch film” indicates that this substance must be biobased with content determined using ASTM D6866 testing method. Since this testing method has been previously established for biobased materials using an existing definition for “biobased,” AMS determined it was not necessary to add a separate definition for “biobased” to the USDA organic regulations.

AMS also considered whether the new definition for “biodegradable biobased mulch film” may raise questions as to whether certain types of paper mulch are intended to be included in the new definition. Specifically, the petition describes a type of paper mulch “comprised of

⁷ Established at 7 CFR § 2902.56; Final Rule published October 18, 2010; 75 FR 63695.

⁸ Established at 7 CFR § 2902.27; Final Rule published May 14, 2008; 73 FR 27958.

kraft paper coated with cured vegetable oil-based resins,” and indicates that these materials are not intended to be included within its scope. In addition, these materials were also not considered a part of the petition during the NOSB review. As such, AMS does not consider these paper mulches to fall within the new definition of “biodegradable biobased mulch film,” since they were not included within the scope of the petition and because these products are not “films.”⁹ This action is also not intended to define newspaper or other recycled paper as “biodegradable biobased mulch films.” The use of newspaper or other recycled paper, without glossy or colored inks, will continue to be allowed as allowed synthetic mulch under the current listing at section 205.601(b)(2)(i) without the additional testing requirements for biodegradable biobased mulch film outlined under the new definition at section 205.2.

The NOSB also recommended that biodegradable biobased mulch film must meet the following criteria: “Must be produced without organisms or feedstocks derived from excluded methods.” AMS has reviewed this language and has incorporated the text into the listing proposed at section 205.601.

The NOSB also recommended the following additional text for the listing for biodegradable biobased mulch film: “Grower must take appropriate actions to ensure complete degradation.” AMS has reviewed this language and has not incorporated this text into the proposed listing as we believe the intent of this text is adequately covered under other sections of the USDA organic regulations. For example, section 205.200 requires that production practices maintain or improve the natural resources of the operation, including soil and water quality. In addition, section 205.203 requires that the producer select and implement practices that maintain

⁹ The biodegradable films intended by the petition are described by the petitioner as “produced from bioplastics and meet standards for aerobic biodegradation in soil.”

or improve the physical, chemical, and biological condition of soil. Thus, the use of film in a manner that causes it to accumulate in the field and not biodegrade over time would not be compliant with the existing requirements at sections 205.200 and 205.203.

The NOSB indicated that the proposed language was intended to clarify the grower's responsibility and what the certifying agent must evaluate. The NOSB indicated that NOP, in conjunction with the NOSB, should develop guidance that explains proper practices for use of biodegradable biobased mulch film. In addition, the NOSB indicated that it expects the inspection process and certification review to verify that biodegradation of the mulch film is occurring so that it does not accumulate in the fields where it is used.

AMS understands that the complete degradation of mulch film may be impacted by a number of factors, including climate, soil type, irrigation, and other production practices. AMS has not determined if there is a demonstrated need for guidance on the use of mulch film at this time. We understand that guidance may be needed in the future depending on the prevalence of adoption of use of mulch film by organic growers and any problems observed by certifying agents with degradation on organic fields. AMS is interested in comments on whether guidance on management practices is necessary at this time to prevent mulch film from accumulating in fields.

Section 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."

This proposed rule would amend section 205.606 by removing paragraph (l), removing subparagraph (w)(2), and redesignating subparagraph (w)(3) as (w)(2), to remove the following substances from the National List:

Hops (*Humulus lupulus*). Hops (*Humulus lupulus*) was added to the National List on June 27, 2007 (72 FR 35137), to enable brewers to produce organic beer with conventionally grown hops in the absence of a commercially available supply of organically grown hops. In December 2009, an organic hop grower association petitioned the NOSB to remove hops from section 205.606 for the purpose of advancing growth in the organic hops market.¹⁰

In response to the petition, the NOSB recommended at its October 2010 public meeting that an expiration date of January 1, 2013 be added to the listing for hops. This recommendation was accepted by the Secretary and was implemented as a Final Rule published June 27, 2012 (77 FR 33290). The listing was amended to read as follows: Hops (*Humulus lupulus*) until January 1, 2013. This action would remove the expired listing for hops (*Humulus lupulus*) from section 205.606 at paragraph (I), as the use exemption for this substance expired on January 1, 2013. Removal of this substance has no new regulatory effect.

Unmodified Rice Starch.

This proposed rule would amend section 205.606 of the National List by removing the expired exemption for “rice starch, unmodified (CAS # 977000-08-0),” referred to below as “unmodified rice starch.” Unmodified rice starch was petitioned to the National List on February 14, 2007 as a gelation agent used in combination with other thickeners. The NOSB recommended adding unmodified rice starch to the National List and also indicated that the listing should expire two years after the date of publication of the final rule. The NOSB recommendation was accepted by the Secretary, and unmodified rice starch was added to the National List effective June 21, 2007 by publication of an interim final rule on June 27, 2007 (72

¹⁰ Petition to remove hops. Available in Petitioned Substances Database, under “H,” available at the NOP Web site at <http://www.ams.usda.gov/NOPNationalList> and <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5085449>.

FR 35137). The listing reads as follows: (2) Rice starch, unmodified (CAS # 977000-08-0)—for use in organic handling until June 21, 2009. This proposed rule would remove the listing for unmodified rice starch that expired on June 21, 2009. Removal of this substance has no new regulatory effect.

This proposed rule would further amend section 205.606 by redesignating paragraphs (e) through (aa) as (g) through (bb), respectively; and redesignating paragraph (d) as paragraph (e) for the purposes of adding the following new substances at paragraphs (d) and (f):

Citrus hystrix, leaves and fruit.

Leaves and fruit of Citrus hystrix were petitioned in August 2011 for use as a nonorganic agricultural ingredient in or on processed products labeled as “organic.”¹¹ C. hystrix leaves and fruit are traditional ingredients in Lao, Thai, and other Southeast Asian cuisines. The tree of C. hystrix is easily identified by its distinctively shaped double leaves and the fruit is known for its bumpy skin. Both the leaves and fruit impart a unique intense flavor and aroma in foods due to their high concentration of essential oils. C. hystrix leaves and fruit are harvested, washed, and can be used fresh, dried, or frozen.

At its May 22-25, 2012, meeting in Albuquerque, NM, the NOSB accepted public comment and recommended adding C. hystrix leaves and fruit to the National List for use in organic handling as a non-organic agricultural ingredient where the organic form is commercially unavailable.¹² In this open meeting, the NOSB evaluated C. hystrix leaves and fruit against evaluation criteria established by 7 U.S.C. 6517 and 6518 of the OFPA evaluation criteria and NOP commercial availability criteria (72 FR 2167). Therefore in response to the

¹¹ Petition is available in Petitioned Substances Database, under “C,” at <http://www.ams.usda.gov/NOPNationalList>.

¹² NOSB Formal Recommendation for *Citrus hystrix* leaves and fruit, May 25, 2012.
<http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5098918>.

NOSB recommendation regarding the use of C. hystrix in organic handling, the Secretary proposes to amend section 205.606 of the National List regulations to allow C. hystrix as a nonorganically produced agricultural product allowed as an ingredient in or on processed products labeled as “organic.”

Curry Leaves (*Murraya koenigii*).

Curry leaves were petitioned in August 2011 for use as a nonorganic agricultural ingredient in or on processed products labeled as “organic.”¹³ Curry leaves, which are also known as sweet neem leaves, are extremely fragrant and are an important ingredient commonly used in Indian, Sri Lankan, Malay and other Southeast Asian cuisines. Curry leaves impart a unique flavor and fragrance which cannot be substituted with other ingredients. Curry leaves are harvested from curry trees, washed, and can be used fresh, dried, or frozen.

At its May 22-25, 2012, public meeting in Albuquerque, NM, the NOSB accepted public comment and recommended adding curry leaves (*Murraya koenigii*) to the National List for use in organic handling as a nonorganic agricultural ingredient when organic curry leaves are commercially unavailable.¹⁴ The NOSB evaluated curry leaves (*Murraya koenigii*) against evaluation criteria established by 7 U.S.C. 6517 and 6518 of the OFPA evaluation criteria and NOP commercial availability criteria (72 FR 2167). Therefore in response to the NOSB recommendation regarding the use of curry leaves (*Murraya koenigii*) in organic handling, the Secretary proposes to amend section 205.606 of the National List regulations to allow curry leaves (*Murraya koenigii*) as a nonorganically produced agricultural product allowed as an

¹³ Petition is available in Petitioned Substances Database, under “C,” at <http://www.ams.usda.gov/NOPNationalList>.

¹⁴ NOSB Formal Recommendation for Curry Leaves, May 25, 2012, <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5098915>.

ingredient in or on processed products labeled as “organic.” The listing is proposed as the common name of the ingredient, with the scientific species name in parentheses, to be consistent with the listing of other agricultural products on National List.

III. Related Documents

Two notices were published regarding meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following Federal Register notices: (1) 77 FR 21067, April 9, 2012 (curry leaves and C. hystrix); and (2) 77 FR 52679, August 30, 2012 (biodegradable biobased mulch film).

The expiration date of January 1, 2013, for the listing for hops was added to the National List on June 27, 2012 by a final rule (77 FR 33290) published in the Federal Register notice on June 6, 2012.

The listing and expiration date of June 21, 2009 for unmodified rice starch was added to the National List on June 21, 2007, by an interim final rule (72 FR 35137) published in the Federal Register on June 27, 2007.

Additional information on substances, including petitions, technical reports, and NOSB recommendations, are available on the NOP Web site at

<http://www.ams.usda.gov/NOPNationalList>.

IV. Statutory and Regulatory Authority

The OFPA, as amended, (7 U.S.C. 6501-6522), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process

by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under section 205.607 of the NOP regulations. The current petition guidelines (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at <http://www.ams.usda.gov/AMSV1.0/nop>.

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in the OFPA (7 U.S.C. 6514(b)). States are also preempted by the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional

requirements must: (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601-624), the Poultry Products Inspection Act (21 U.S.C. 451-471), or the Egg Products Inspection Act (21 U.S.C. 1031-1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301-399), nor the authority of the Administrator of EPA under the FIFRA (7 U.S.C. 136-136(y)).

The OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to

certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000. According to USDA, National Agricultural Statistics Service (NASS), certified organic acreage exceeded 3.5 million acres in 2011.¹⁵ According to NOP's Accreditation and International Activities Division, the number of certified U.S. organic crop and livestock operations totaled over 17,281 in 2011. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA. The procedures for producing and handling certified apiculture products will remain essentially the same under this proposed rule as they have been since ACAs began to certify apiculture products organic under the livestock regulations. The difference under the proposed rule is that the regulation will be more specific, and is tailored to apiculture production and handling requirements.

U.S. sales of organic food and non-food have grown from \$1 billion in 1990 to \$31.4 billion in 2011. Sales in 2011 represented 9.5 percent growth over 2010 sales.¹⁶ In addition, the USDA has 86 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at <http://www.ams.usda.gov/nop>. AMS believes that most of these

¹⁵ U.S. Department of Agriculture, National Agricultural Statistics Service. October 2012. 2011 Certified Organic Productions Survey. <http://usda01.library.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf>.

¹⁶ Organic Trade Association. 2012. Organic Industry Survey. www.ota.com.

accredited certifying agents would be considered small entities under the criteria established by the SBA. Certifying agents reported approximately 29,000 certified operations worldwide in 2011.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, and Chapter 35.

E. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

F. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted by the NOSB to the Secretary to add three substances on the National List and to remove two expired listings from the National List. A 60-day period for interested persons to comment on this rule is provided and is deemed appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is proposed to be amended as follows:

PART 205 – NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501 – 6522.

2. Section 205.2 is amended by adding one new term in alphabetical order to read as follows:

§ 205.2 Terms defined.

* * * * *

Biodegradable biobased mulch film. A synthetic mulch film that meets the following criteria:

- (1) Meets the compostability standards of ASTM D6400 or D6868, or of other equivalent international standards, i.e., EN 13432, EN 14995, or ISO 17088;
- (2) Demonstrates at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years, in soil, according to ISO 17556 or ASTM D5988 testing methods; and
- (3) Must be biobased with content determined using ATM D6866 testing method.

* * * * *

3. Section 205.601 is amended by adding paragraph (b)(2)(iii) to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(b) * * *

(2) * * *

- (iii) Biodegradable biobased mulch film as defined in § 205.2. Must be produced without organisms or feedstock derived from excluded methods.

* * * * *

4. Section 205.606 is amended by:

A. Removing paragraph (l);

B. Removing paragraph (w)(2);

C. Redesignating paragraph (w)(3) as (w)(2);

D. Redesignating paragraphs (e) through (aa) as (g) through (bb) respectively;

E. Redesignating paragraph (d) as paragraph (e); and

F. Adding new paragraphs (d) and (f). The additions read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic.”

* * * * *

(d) Citrus hystrix, leaves and fruit.

* * * * *

(f) Curry leaves (Murraya koenigii).

* * * * *

Dated: August 16, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

[FR Doc. 2013-20476 Filed 08/21/2013 at 8:45 am; Publication Date: 08/22/2013]